

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 134, H.D. 1, PROPOSED S.D. 2

April 7, 2015

RELATING TO TAXATION

House Bill No. 134, H.D. 1, Proposed S.D. 2, extends the half percent county surcharge on State tax from December 31, 2022 to December 31, 2027, and authorizes counties that did not adopt the half percent county surcharge on State tax prior to December 31, 2005 to adopt a county surcharge prior to January 1, 2016. The bill specifies that the half percent county surcharge, if adopted by a county that did not adopt a county surcharge, is to take effect on January 1, 2017. The bill also limits the use of surcharge revenues to “capital costs,” and requires the Honolulu Authority for Rapid Transportation (HART) to conduct audits, to submit various audits and reports to the Legislature and Governor, to hold public hearings on those audits and reports, and to post those audits and reports on the HART’s website prior to the hearings.

The Department of Budget and Finance believes that the information that the HART provided the Committee is particularly helpful to the Legislature in making an informed decision on whether to extend the half percent county surcharge.

Further, because of the magnitude and complexity of the rail project (it is the largest public works undertaking in the State), we believe that it would be prudent to focus on completing the current scope of the project - the 20 mile route from East Kapolei to Ala Moana Center.

We are willing to assist the Committee in reviewing and analyzing the information provided by the HART.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION

P.O. BOX 259
HONOLULU, HAWAII 96809
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To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: Tuesday, April 7, 2015
Time: 9:00 A.M.
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 134, H.D. 1, Proposed S.D. 2, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 134, H.D. 1, Proposed S.D. 2, and provides the following comments for your consideration.

H.B. 134, H.D. 1, Proposed S.D. 2, authorizes the extension of the City and County of Honolulu surcharge on state taxes at the 0.5% rate, authorizes other counties to adopt ordinances establishing county surcharge on state taxes at the rate of no more than 0.5%, limits the use of the county surcharge revenues to capital costs, creates a transit agency, and places certain requirements on the board of directors of the transit agency. The measure has a defective effective date of July 1, 2050.

H.B. 134, H.D. 1, Proposed S.D. 2 amends section 46-16.8 (b), Hawaii Revised Statutes (HRS), by giving the authority to City and County of Honolulu to extend the surcharge tax from January 1, 2023 to December 31, 2027 at the 0.5% rate. An election to extend the surcharge tax shall be done by ordinance adopted prior to January 1, 2016, but no earlier than July 1, 2015.

H.B. 134, H.D. 1, Proposed S.D. 2 amends section 46-16.8 (c), HRS, by giving the authority to other counties to establish a surcharge tax at the rate of no more than 0.5%. An election to establish a surcharge tax shall be done by ordinance adopted prior to January 1, 2016, but no earlier than July 1, 2015. The bill requires the Department to levy, assess, collect and administer the surcharge tax between January 1, 2017 and December 31, 2027.

In order for the Department to administer a county surcharge for the rest of the counties, the Department strongly recommends that all counties be required to adopt the same tax rate. As the Department has noted in the past, different tax rates increase administrative and enforcement

issues, and may cause taxpayers to improperly source their income to counties with lower tax rates. If each county adopts its surcharge at the same tax rate, there will be no incentive for a taxpayer to improperly source its income. Accordingly, the Department recommends that the termination of the surcharge for all counties occur on the same date.

Due to the substantial number of changes that must be done to the forms, instructions and computer system, and recognizing that the Department will be implementing Tax System Modernization starting in 2015, the Department requests that the effective date for implementation of this surcharge be no earlier than January 1, 2018.

The Department also notes that additional resources, including an appropriation, may be needed for the Department to implement the new surcharge tax. The amount of funding that may be needed is not known at this time.

Thank you for the opportunity to provide comments.

**OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

April 6, 2015

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Ways and Means
State Senate
State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Senator Tokuda and Members of the Committee:

SUBJECT: Testimony on House Bill No. 134 HD1, SD1 and Proposed SD2

As Mayor of the City and County of Honolulu, I appreciate this opportunity to submit testimony regarding House Bill No. 134, HD 1, SD1 and Proposed SD2.

I understand you are deliberating on two versions of HB 134. SD1 extends the county surcharge five (5) years to 2027, with the opportunity for the Legislature to extend the surcharge beyond 2027, by concurrent resolution, up to two (2) times for ten (10) year periods each, to no later than 2047. The proposed SD2 extends the county surcharge to 2027.

I prefer a twenty-five (25) year extension over a shorter term, principally because it allows the City and County of Honolulu to complete the Locally Preferred Alternative (LPA) to UH Manoa and west Kapolei and issue long term bonds which reduce project costs. I remind you there is no other near-term multi-modal transportation alternative to Oahu's confounding and growing traffic congestion problem but for the currently designed and under-construction Honolulu Authority for Rapid Transportation (HART) work on the rail project's Minimal Operating Segment (MOS). We must not lose sight of the relief this critical infrastructure project will bring to Oahu's residents and tourists alike, relief which will positively affect the quality of life of each and every one of us on Oahu.

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Ways and Means
April 6, 2015
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For your consideration, I have attached alternative legislation to the SD1. The benefit of the City's proposed draft version is that it simply authorizes the Legislature and Governor to do that which it already has the power to do, remove the county surcharge. I would be pleased to discuss the attached draft legislation at the hearing.

I look forward to our further discussions and thank you again for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Caldwell', with a long horizontal flourish extending to the right.

Kirk Caldwell
Mayor

Attachment

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to address the county
2 general excise and use tax surcharge.

3 More specifically, this Act:

4 (1) Authorizes the extension of the surcharge by any
5 county that has adopted an ordinance to establish the surcharge
6 before the effective date of this Act;

7 (2) Authorizes other counties to adopt ordinances
8 establishing the surcharge; and

9 ~~(3) Limits the use of surcharge revenues to "capital~~
10 ~~costs"; and~~

11 ~~(34)~~ Requires certain actions by the ~~board of the transit~~
12 transportation agency that is constructing the transportation
13 system or locally preferred alternative for a mass transit
14 project funded by the surcharge.

15 SECTION 2. This Act shall not affect the validity or
16 effect of any surcharge on state tax adopted pursuant to Act
17 247, Session Laws of Hawaii 2005, before the effective date of
18 this Act.

SECTION 3. Section 46-16.8, Hawaii Revised Statutes, is amended to read as follows:

"~~[§] §46-16.8~~ County surcharge on state tax. (a) Each county may establish a surcharge on state tax at the rates enumerated in sections 237-8.6 and 238-2.6. A county electing to establish this surcharge shall do so by ordinance; provided that:

(1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;

(2) The ordinance shall be adopted prior to December 31, 2005; and

(3) No county surcharge on state tax that may be authorized under this ~~[section]~~ subsection (a) shall be levied prior to January 1, 2007~~[-]~~, and any surcharge levied prior to January 1, 2007, shall not be levied or after December 31, 2022, unless extended pursuant to subsection (b).

Notice of the public hearing required under paragraph (1) shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of the hearing.

~~[(b)]~~ A county electing to exercise the authority granted under this ~~[section]~~ subsection shall notify the director of

1 taxation within ten days after the county has adopted a
2 surcharge on state tax ordinance and, beginning no earlier than
3 January 1, 2007, the director of taxation shall levy, assess,
4 collect, and otherwise administer the county surcharge on state
5 tax.

6 **(b) Each county that has established a surcharge on state**
7 **tax before ~~the effective date of this Act~~ December 31, 2047**
8 **under authority of subsection (a) may extend the surcharge from**
9 **January 1, 2023, ~~until~~ through December 31, 20427, at the same**
10 **rates. A county electing to extend this surcharge shall do so**
11 **by ordinance; provided that:**

12 **(1) No ordinance shall be adopted until the county has**
13 **conducted a public hearing on the proposed ordinance; and**

14 **(2) The ordinance shall be adopted prior to January 1,**
15 **2016, but no earlier than July 1, 2015.**

16 **A county electing to exercise the authority granted under**
17 **this subsection shall notify the director of taxation within ten**
18 **days after the county has adopted an ordinance extending the**
19 **surcharge on state tax. Beginning on January 1, 2023, the**
20 **director of taxation shall levy, assess, collect, and otherwise**
21 **administer the extended surcharge on state tax.**

1 (c) Each county that has not established a surcharge on
2 state tax before ~~the effective date of this Act~~ December 31,
3 2005, may establish the surcharge at the rates enumerated in
4 sections 237-8.6 and 238-2.6. A county electing to establish
5 this surcharge shall do so by ordinance; provided that:

6 (1) No ordinance shall be adopted until the county has
7 conducted a public hearing on the proposed ordinance;

8 (2) The ordinance shall be adopted prior to January 1,
9 2016, but no earlier than July 1, 2015; and

10 (3) No county surcharge on state tax that may be
11 authorized under this subsection shall be levied prior to
12 January 1, 2017, or after December 31, 2027.

13 A county electing to exercise the authority granted under
14 this subsection shall notify the director of taxation within ten
15 days after the county has adopted a surcharge on state tax
16 ordinance. Beginning on January 1, 2017, the director of
17 taxation shall levy, assess, collect, and otherwise administer
18 the county surcharge on state tax.

19 (d) Notice of the public hearing required under subsection
20 (b) or (c) before adoption of an ordinance establishing or
21 extending the surcharge on state tax shall be published in a
22 newspaper of general circulation within the county at least

1 twice within a period of thirty days immediately preceding the
2 date of the hearing.

3 ~~[(e)]~~ (e) Each county with a population greater than five
4 hundred thousand that adopts or extends a county surcharge on
5 state tax ordinance pursuant to subsection (a) or (b) shall use
6 the surcharges received from the State for:

7 (1) ~~+Operating or capital+~~ Capital costs of a locally
8 preferred alternative for a mass transit project; and

9 (2) Expenses in complying with the Americans with
10 Disabilities Act of 1990 with respect to paragraph (1).

11 The county surcharge on state tax shall not be used to build or
12 repair public roads or highways, bicycle paths, or support
13 public transportation systems already in existence prior to July
14 12, 2005.

15 ~~[(d)]~~ (f) Each county with a population equal to or less
16 than five hundred thousand that adopts a county surcharge on
17 state tax ordinance pursuant to ~~[subsection (a)]~~ this
18 section shall use the surcharges received from the State for:

19 (1) ~~+Operating or capital+~~ Capital costs of public
20 transportation within each county for public transportation
21 systems, including public roadways or highways, public buses,

1 trains, ferries, pedestrian paths or sidewalks, or bicycle
2 paths; and

3 (2) Expenses in complying with the Americans with
4 Disabilities Act of 1990 with respect to paragraph (1).

5 [~~(e)~~] (g) As used in this section, "capital costs" means
6 nonrecurring costs required to construct a transit facility or
7 system, including debt service, costs of land acquisition and
8 development, acquiring of rights-of-way, planning, design, and
9 construction, and including equipping and furnishing the
10 facility or system."

11 SECTION 4. Section 237-8.6, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) Each county surcharge on state tax that may be
14 adopted or extended pursuant to section [~~46-16.8(a)~~] 46-
15 16.8 shall be levied beginning in the taxable year after the
16 adoption of the relevant county ordinance; provided that no
17 surcharge on state tax may be levied [~~prior~~]:

18 (1) Prior to:

19 (A) January 1, 2007[-], if the county surcharge on
20 state tax was established by the adoption of an
21 ordinance prior to ~~January 1, 2007~~ December 31,
22 2005; or

1 (B) January 1, 2017, if the county surcharge on state
2 tax was established by the adoption of an
3 ordinance after June 30, 2015, but prior to
4 January 1, 2016; and

5 (2) After December 31, 20427."

6 SECTION 5. Section 238-2.6, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) Each county surcharge on state tax that may be
9 adopted or extended shall be levied beginning in the taxable
10 year after the adoption of the relevant county ordinance;
11 provided that no surcharge on state tax may be levied [~~prior~~]:

12 (1) Prior to:

13 (A) January 1, 2007[-], if the county surcharge on
14 state tax was established by the adoption of an
15 ordinance prior to January 1, 2007; or

16 (B) January 1, 2017, if the county surcharge on state
17 tax was established by the adoption of an
18 ordinance after June 30, 2015, but prior to
19 January 1, 2016; and

20 (2) After December 31, 20427."

21 SECTION 6. Act 247, Session Laws of Hawaii 2005, is
22 amended by amending section 9 to read as follows:

"SECTION 9. This Act shall take effect upon its approval;
provided that:

(1) If none of the counties of the State adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, this Act shall be repealed and section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act;

(2) If any county does not adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, it shall be prohibited from adopting such an ordinance pursuant to this Act, unless otherwise authorized by the legislature through a separate legislative act; and

(3) If an ordinance to levy a county surcharge on state tax is adopted by December 31, 2005:

(A) The ordinance shall be repealed on December 31, 2022[+], or in the event the ordinance is extended provided that the repeal of the ordinance shall not affect the validity or effect of an ordinance to extend a surcharge on state tax adopted pursuant to Act , Session Laws of Hawaii 2015, the ordinance shall be repealed on December 31, 2047;

(B) This Act shall be repealed on December 31,
[2022+] 2042; and

(C) Section 437D-8.4, Hawaii Revised Statutes, shall be
reenacted in the form in which it read on the day prior to the
effective date of this Act."

SECTION 7. (a) For the purposes of this section:

~~"Board" means the board of directors of the transit agency.~~

"County" means the county, of which the ~~board~~
transportation agency is a part.

~~"Transit agency"~~ "Transportation agency" means the agency
constructing the transportation system or locally preferred
alternative for a mass transit project, the capital costs of
which ~~is~~ are funded by the county surcharge on state tax
authorized under section 46-16.8, Hawaii Revised Statutes, ~~prior~~
~~to the effective date of this Act.~~

~~(b) The board shall submit annual reports to the~~
~~legislature and governor on its transit-oriented development~~
~~activities. The reports shall be submitted at least twenty days~~
~~prior to each regular session from 2016 to 2027.~~
~~The reports shall include a description of:~~

~~(1) The actions and coordination undertaken to integrate transit-oriented development with anticipated population and housing growth; and~~

~~(2) The plans and activities to integrate transit stations with surrounding structures, facilities, and uses.~~

~~(c) With each annual report submitted pursuant to subsection (b), the board shall also submit the following:~~

~~(1) Management and financial audits of the board, transit agency, and locally preferred alternative for a mass transit project under construction by the transit agency;~~

~~(2) Project management reports on the construction of the locally preferred alternative for a mass transit project; and~~

~~(3) Status reports submitted to the Federal Transit Administration by a third party contracted to monitor the construction of the locally preferred alternative for a mass transit project for the Administration.~~

~~(d) The board shall place, as discussion items on its meeting agendas, each audit and report subject to subsection (c). The audit or report shall be placed on the agenda of the meeting next following the completion of the audit or report.~~

~~The board shall make available an electronic copy of the audit or report on the board's website at the same time the meeting agendas are posted for the public notice.~~

~~— The board shall receive public testimony on the audits or reports at the meetings, in accordance with chapter 92, Hawaii Revised Statutes. Prior to January 1, 2027, and January 1, 2037, the transportation agency shall provide the legislature with proof that it has complied with the following:~~

~~(1) The transportation agency shall obtain all necessary state and federal environmental clearances for the transportation system or applicable additional transit route for the locally preferred alternative for a mass transit project;~~

~~(2) The transportation agency shall have an updated financial plan reviewed and approved by the appropriate county council;~~

~~(3) The transportation agency shall have an updated preliminary engineering costs estimate reviewed and approved by the appropriate county council; and~~

~~(4) The auditor shall have completed a financial and management audit of the transportation agency.~~

~~(c) The state may, through legislative action with concurrence from the governor, terminate any surcharge adopted~~

1 or extended pursuant to this Act, effective as of January 1,
2 2028 and January 1, 2038.

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect on July 1, 2050.

Report Title:

Public Transit; County Surcharge on State Tax

Description:

Reauthorizes the counties' authority to establish a county surcharge on state tax for a limited time period, with the surcharge to be effective from 1/1/2017 to 12/31/2027, if adopted. Allows counties that have already established a county surcharge on state tax to extend the surcharge on state tax to 12/31/20427. ~~Limits the use of surcharge revenues to capital costs.~~ Specifies conditions that must be completed before 1/1/2027 and 1/1/2037. The state may, through legislative action with concurrence from the governor, terminate any surcharge adopted or extended pursuant to this Act, effective as of January 1, 2028, and January 1, 2038. Requires the board of directors of the transit agency constructing the locally preferred alternative for a mass transit project to conduct audits, submit annual reports to the governor and the legislature, and conduct public hearings and take testimony on the audits and reports.



HONOLULU AUTHORITY for RAPID TRANSPORTATION

IN REPLY REFER TO:
CMS-AP00-01193

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

BOARD OF DIRECTORS

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Carrie K.S. Okinaga, Esq.

Statement of
DANIEL A. GRABAUSKAS
Executive Director and CEO, Honolulu Authority for Rapid Transportation
before the

SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, April 7, 2015
9:00 a.m.
State Capitol, Conference Room 211

In consideration of
HB 134, HD1, SD1
RELATING TO TAXATION
and
HB 134, HD1, SD1 (PROPOSED SD2)
RELATING TO TAXATION

Chair Tokuda, Vice Chair Kouchi, and Members of the Senate Committee on Ways and Means,

The Honolulu Authority for Rapid Transportation (HART) supports House Bill 134, HD1, SD1, Relating to Taxation which, among other changes, proposes to allow all counties, including the City and County of Honolulu (City) to adopt ordinances allowing for county surcharges on the State general excise and use taxes (GET) to December 31, 2027, and authorizes the Legislature to extend the GET beyond December 31, 2027, by concurrent resolution, up to two (2) times for 10-year periods each, to no later than December 31, 2047.

HART would like to thank your Committee on Ways and Means for the proposed SD2, which requires, among other changes, any county that has already adopted a county surcharge on state tax to meet the proposed SD2 requirements in order to extend its surcharge on state tax from January 1, 2023, until December 31, 2027 (5-year extension).

HART acknowledges your Committee's consistent position that a 5-year extension of the GET sunset date would be sufficient to cover both costs and provide contingencies for the current 20-mile, 21-station project, also referred to as the minimum operable segment; however, HART respectfully requests your consideration to further the discussion for a 25-year extension to December 31, 2047, which would provide the clearest direction for planning purposes on the desire to start immediate plans for extensions to the University of Hawaii at Manoa (UH) and downtown Kapolei, selected as the locally preferred alternative.

While HART is continually in the process of re-engineering rail designs, reducing borrowing costs, and seeking public-private partnership costs to address its financial challenges, an extension of the GET surcharge is still necessary to provide funding for the Honolulu Rail Transit Project without unduly adding to the tax burden on citizens of Honolulu. Transit users, including visitors to Oahu, will help pay for rail transportation through the GET surcharge, which is a more equitable method of assessing the costs of this public transportation system. Most agencies in the United States fund mass transportation services with a dedicated source of funding, such as sales taxes rather than property taxes. Thus, this policy would be consistent with best practices in most jurisdictions.

As noted earlier, HART's major contracts must be advertised by the end of this year and awarded by mid-2016 to stay on schedule. Staying on schedule is critical to prevent costly delays and to comply with the terms of the Full Funding Grant Agreement. According to State law, Hawaii Revised Statutes Section 103D-309 and Hawaii Administrative Rules Section 3-122-102, pertaining to HART's contracts, the City must have funding in place before HART can award contracts to complete the project. No contracts can be awarded without funding in place. With a dedicated source of financing, the City and HART will be better able to plan and construct a rail transit service in a secure financial position.

In addition, Honolulu's construction costs are among the highest in the nation, and rising. HART has consulted with a wide spectrum of the construction industry, including experts who track construction prices across the country as well as here in Hawaii. All projections lead us to believe that construction costs are expected to increase 12% to 15% each year over the next two years.

Pushing the project schedule back will mean higher bids and higher costs. For example, on a billion-dollar contract, with these projections, simply waiting a year will cost our taxpayers more than \$120 million to \$150 million with no benefit. Time is money and this is particularly true in the construction field.

Based on the legal necessity to have funding in place in order to sign contracts, along with rapidly rising market costs that are beyond our control, we believe extending the sunset on the GET now is the best course of action.

Thank you for this opportunity to provide written testimony.

Bernard P. Carvalho, Jr.
Mayor



Nadine K. Nakamura
Managing Director

OFFICE OF THE MAYOR

County of Kaua'i, State of Hawai'i
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Testimony of
Mayor Bernard P. Carvalho, Jr.
Before the Senate Committee on Ways and Means
Tuesday, April 7, 2015
9:00 a.m.
Conference Room 211
HB 134, HD1, SD1 Relating to Taxation
and
HB 134, HD1, SD1 (Proposed SD2)

Aloha Chair Tokuda and members of the Committee,

On behalf of the County of Kaua'i, allow me to express my support for the overall intent of HB 134, HD1, SD1 Relating to Taxation. This measure allows all the counties, to adopt ordinances allowing for county surcharges on state general excise and use taxes at a .5% rate, beginning January 1, 2017.

I'm concerned that HB 134, HD1, SD2 (Proposed) deletes "operating" costs and limits use to "capital" cost. We request that counties with populations less than 500,000 be allowed to spend the revenue on "operating or capital" costs which will give the County of Kaua'i the flexibility to use funds to expand and increase frequencies of the Kaua'i Bus.

Mahalo for your consideration.



**Testimony to the Senate Committee on Ways and Means
Tuesday, April 7, 2015 at 9:00 A.M.
Conference Room 211, State Capitol**

**RE: HOUSE BILL 134 HD1 SD1 AND HOUSE BILL 134 HD1 SD1 PROPOSED SD2
RELATING TO TAXATION**

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 134 HD1 SD1 and its Proposed SD2.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber supports an extension of the county surcharge on the excise tax for rail. The Chamber has always supported rail and would like to see the completion of the project as set forth in the Full Funding Grant Agreement between the City & County of Honolulu and the Federal Transit Administration. This transportation solution is in line with one of the Chamber's primary missions: to improve the quality of life for the people of Hawaii, while supporting initiatives that are the catalyst for business growth opportunities. Although the decision is a challenging one and concerns about the financial situation are valid, if we look at the big picture and long-term benefits of this project, we believe that rail will be a positive step for Hawaii.

Thank you for the opportunity to testify.

April 5, 2015

TO: Senator Jill Tokuda, Chair
Senate Ways and Means Committee

FROM: Bob Nakata, Co-Chair, FACE Housing Task Force

RE: **HB134, HD1, SD2 – Rail GET Surcharge Proposal**

FACE has supported Honolulu's Rail Transit System primarily because it believes that truly affordable housing requires higher densities and higher densities require rail transit. We are strong supporters of TOD (Transit Oriented Development). The transportation needs of West Oahu and the University of Hawaii Manoa and keeping the Country Country are important but secondary reasons for rail, in our view.

Housing and homelessness are crisis issues and will remain so for many years. Honolulu has the worst problem in the nation, and it is getting even worse. We cannot control our population because of the U.S. Constitution and we have made Honolulu a great place to live in, adding to its great physical attributes. Rail will help push and keep housing costs down for many years into the future. That is why we support a 25-year extension to the .5 percent GET surcharge rather than the 5-year extension called for in the proposed HB134, HD1, SD2.

The 5-year extension will save the City from the \$2.5 billion costs associated with closing down the 20-mile segment now under construction and allow for its completion. However, it does not allow for how the possibly hundreds of thousands of new residents of Oahu in the coming decades will have their traffic and housing needs met. Now is the opportune time to address them with the proposed extensions to Manoa and Kapolei. To shut down and gear up again to complete the extensions will be more costly than planning to move ahead now.

Thank you.

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Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 7, 2015

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE RON KOUCHI, VICE CHAIR, COMMITTEE ON WAYS AND MEANS

SUBJECT: **H.B. 134, HD1, SD1 RELATING TO TAXATION.** Extends the deadline for counties to adopt a county surcharge on state tax to 12/31/2015. Extends the county surcharge on state tax to 12/31/2027. Authorizes the legislature to extend the county surcharge on state tax beyond 12/31/2027, by concurrent resolution, up to two times for 10-year periods each, to no later than 12/31/2047. Specifies requirements that must be completed before the legislature may consider introduction of a concurrent resolution to extend the county surcharge on state tax. (SD1)

H.B. 134, HD1, SD1, PROPOSED SD2, RELATING TO TAXATION.

Reauthorizes the counties' authority to establish a county surcharge on state tax for a limited time period, with the surcharge to be effective from 1/1/2017 to 12/31/2027, if adopted. Allows counties that have already established a county surcharge on state tax to extend the surcharge on state tax to 12/31/2027. Limits the use of surcharge revenues to capital costs. Requires the board of directors of the transit agency constructing the locally preferred alternative for a mass transit project to conduct audits, submit annual reports to the governor and the legislature, and conduct public hearings and take testimony on the audits and reports. Effective 7/1/2050. (Proposed SD2)

Hearing

DATE: Tuesday, April 7, 2015
TIME: 9:00 a.m.
PLACE: Conference Room 211

Dear Chair Tokuda, Vice Chair Kouchi and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred eighty general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is a supporter of the Honolulu Rail Transit project and supports efforts to ensure the project is completed in its entirety. The funding of the project is the most crucial component to make certain that the project is delivered to the City and County of Honolulu and its residents. With that GCA supports all efforts in finding the most viable solution of funding available and the due diligence required in uncovering all options.

The GCA continues to support the Honolulu Rail Transit Project together with the concerted efforts of all parties involved to plan and construct the rail transit project. Rail will provide the most reliable, cost-efficient and convenient transportation pipeline between urban Honolulu and West Oahu.

GCA appreciates the opportunity to share its testimony.



HONOLULU AUTHORITY for RAPID TRANSPORTATION

IN REPLY REFER TO:
CMS-AP00-01194

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

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Statement of
IVAN LUI-KWAN
Chair of the Board of Directors of the
Honolulu Authority for Rapid Transportation
before the

SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, April 7, 2015
9:00 a.m.
State Capitol, Conference Room 211

In consideration of
HB 134, HD1, SD1
RELATING TO TAXATION
and
HB 134, HD1, SD1 (PROPOSED SD2)
RELATING TO TAXATION

Chair Tokuda, Vice Chair Kouchi, and Members of the Senate Committee on Ways and Means,

The Board of Directors of the Honolulu Authority for Rapid Transportation (HART) supports House Bill 134, HD1, SD1, Relating to Taxation which, among other changes, proposes to allow all counties, including the City and County of Honolulu (City) to adopt ordinances allowing for county surcharges on the State general excise and use taxes (GET) to December 31, 2027, and authorizes the Legislature to extend the GET beyond December 31, 2027, by concurrent resolution, up to two (2) times for 10-year periods each, to no later than December 31, 2047.

The HART Board of Directors thanks your Committee on Ways and Means for the proposed SD2, extending the sunset date of county surcharge. The HART Board of Directors favors and supports legislative and City Council measures which would allow for the county surcharge on State general excise and use taxes to be extended for twenty-five (25) years, as such an extension will enable HART to eliminate the projected project deficit and to start immediate plans for extensions to the University of Hawaii at Manoa and downtown Kapolei, as components of the Locally Preferred Alternative.

Please find attached Resolution 2015-5, stating the HART Board of Directors' refined position.

Thank you for this opportunity to provide written testimony.

Honolulu Authority for Rapid Transportation

RESOLUTION NO. 2015-5

**REGARDING THE POSITION OF THE BOARD OF DIRECTORS OF THE
HONOLULU AUTHORITY FOR RAPID TRANSPORTATION ON THE COUNTY
TAX SURCHARGE PROCEEDS COLLECTED BY THE STATE OF HAWAII FOR
THE HONOLULU RAIL TRANSIT PROJECT**

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended; and

WHEREAS, with the enactment of Act 247, Hawaii Session Laws 2005, the Hawaii State Legislature authorized the City and County of Honolulu to levy a surcharge of one-half percent on the state general excise and use taxes by ordinance to fund operating or capital costs of a locally preferred alternative (LPA) for a mass transit project, and expenses in complying with the Americans with Disabilities Act of 1990 with respect to such project; and

WHEREAS, on August 10, 2005, the Honolulu City Council passed Ordinance 05-027 which established the one-half percent county surcharge to be collected by the State beginning January 1, 2007 and expiring on December 31, 2022; and

WHEREAS, through the approval of Ordinance 07-001, the Honolulu City Council selected a fixed guideway system as the LPA for the Honolulu High-Capacity Transit Corridor Project (now known as the Honolulu Rail Transit Project or H RTP); and

WHEREAS, Ordinance 07-001 requires that the LPA be financed only by general excise and use tax surcharge revenues, interest earned on the revenues, and any federal, state, or private revenues; and

WHEREAS, during the Twenty-Eighth State Legislature (2015-2016), there have been various legislative measures introduced and discussed relating to the county surcharge on state general excise and use taxes; and

WHEREAS, two legislative measures, namely Senate Bill (SB) 19 and House Bill (HB) 134, as introduced would make the one-half percent county surcharge permanent; and

WHEREAS, following hearings in the Senate Transportation Committee and Public Safety, Intergovernmental and Military Affairs Committee, as well as the Senate Ways and Means Committee, an amended SB19 that would extend the county surcharge for five (5) years through December 31, 2027 passed the full Senate and has been transmitted to the House of Representatives for action; and

WHEREAS, following a recommendation of the House Finance Committee, an amended HB134 that would terminate the existing county surcharge on January 1, 2016 and authorize a new county surcharge, beginning January 1, 2017 for a period

to be specified in the final bill, at a reduced rate of .25%, passed the full House of Representatives and was transmitted to the Senate for action; and

WHEREAS, following a joint hearing on the amended HB134 the Senate Transportation and Public Safety, Intergovernmental and Military Affairs Committees voted to recommend further amendments to the bill to extend the existing county surcharge at the current rate through December 31, 2027, subject to up to two ten-year extensions at the current country surcharge rate of one-half percent for the purpose of funding two extensions of the LPA if approved by concurrent resolutions of the House of Representatives and Senate; and

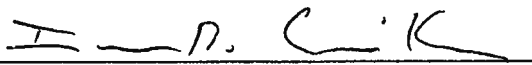
WHEREAS, the Mayor of the City and County of Honolulu has submitted testimony to the State Legislature in support of extending the county surcharge and has advocated a twenty-five (25) year extension of the existing county surcharge beyond 2022; and

WHEREAS, the Chair of the Honolulu City Council has submitted testimony to the State Legislature in support of extending the county surcharge as it represents the most viable and equitable means to address the projected project deficit of the HRTTP;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. The HART Board of Directors favors and supports legislative and City Council measures which would allow for the county surcharge on State general excise and use taxes to be extended for twenty-five (25) years, as such an extension will enable HART to eliminate the projected HRTTP deficit and to start immediate plans for extensions to the University of Hawaii at Manoa and downtown Kapolei, as components of the LPA.
2. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on
APR 2 2015.


Board Chair

ATTEST:


Board Administrator



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Eighth Legislature, State of Hawaii
The Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association
April 7, 2015

H.B. 134, H.D. 1, S.D. 1, Proposed S.D. 2 -
RELATING TO TAXATION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 134, H.D. 1, S.D. 1, Proposed S.D. 2, which extends by five years the county surcharge on the general excise tax for the rail project. While we remain concerned about the increased construction costs above what was originally projected, the residents of Oahu have determined a need for a viable rapid transit system and additional funds are needed to continue the construction of the rail project.

This bill also provides an opportunity for all counties to adopt an ordinance to establish a county surcharge for mass transit capital costs.

Thank you for the opportunity to testify in support of H.B. 134, H.D. 1, S.D. 1, Proposed S.D. 2.

Respectfully submitted,


for Randy Perreira
Executive Director



HAWAII REGIONAL COUNCIL OF CARPENTERS

April 6, 2015

The Honorable Jill N. Tokuda, Chair,
The Honorable Ronald D. Kouchi, Vice Chair, and
Members of the Senate Committee on Ways and Means

Statement of the Hawaii Regional Council of Carpenters on HB134 HD1 SD2 Relating to Taxation

Tuesday, April 7, 2015
9:00 a.m., Room 211, State Capitol

Dear Chair Tokuda, Vice Chair Kouchi, and members of the committee,

The Hawaii Regional Council of Carpenters represents 6,000 union carpenters and drywall installers in the state. We **support the intent** of HB134 HD1 SD2, but respectfully request that the 0.5 percent county surcharge on state tax be extended for not less than 25 years beyond the current sunset date to complete the construction of the Honolulu Rail Transit project and the locally preferred alternative (LPA)—extensions to the current rail line.

The City and County of Honolulu utilizes the county surcharge on state tax to fund the construction of the Honolulu Rail Transit project and bring in allocated federal funds. This source of revenue is also essential to the LPA, which can only be financed through general excise and use tax surcharge revenues, interest earned on the revenues, and any federal, state, or private revenues.

The LPA is a vital addition to the current rail line. It will benefit both residential commuters and students by extending the rail line westward to downtown (West) Kapolei, and eastward to the University of Hawaii at Manoa. To ensure that the rail project and LPA continue seamlessly, an adequate source of funding must be in place.

To date, \$1.3 billion has been spent building the rail project. Construction crews have completed more than two miles of the guideway, and construction on the Rail Operations Center is more than 60 percent complete. With 60 percent of the project's construction contracts awarded, and over 1,300 people currently employed through rail-related jobs, we cannot risk a costly construction halt and restart.

Thank you for the opportunity to provide these comments on HB134 HD1 SD2.

STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Houghtailing Street, Honolulu, Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 841-0300

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Testimony to the House Committee on Ways and Means
Tuesday, April 07, 2015
9:00 a.m.

State Capitol - Conference Room 211

RE: HOUSE BILL NO. 134, H.D. 1, S.D. 1, RELATING TO TAXATION

Chair Tokuda, Vice-Chair Kouchi, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii provides these **comments** on H.B. 134, H.D. 1, S.D. 1, which proposes to extend the deadline for counties to adopt a county surcharge on state tax to 12/31/2015; extend the county surcharge on state tax to 12/31/2027; authorize the Legislature to extend the county surcharge on state tax beyond 12/31/2027, by concurrent resolution, up to two times for 10-year periods each, to no later than 12/31/2047; specify requirements that must be completed before the legislature may consider introduction of a concurrent resolution to extend the county surcharge on state tax.

From the start, BIA-Hawaii has been a strong proponent of the rail transit system as an appropriate "growth management" tool to increase the population density along the 20-mile transit corridor. To stop support for the transit system at this time would prevent future growth without a significant investment in roadway infrastructure, or allowing for more development into areas not currently planned for future growth (i.e. Hawaii Kai, Windward Oahu, North Shore, and Central Oahu-between Wahiawa and Wailua).

According to state law, funding must be in place in order to award the contracts required to complete the project. If the minimal operating segment of the project is not completed, the Full Funding Grant Agreement between the City & County of Honolulu and the Federal Transit Administration would require our city to return the funds provided by the Federal government.

BIA-Hawaii supports extending the county surcharge on the excise tax for 4-5 years in order to meet the legal requirement of having sufficient funds available when entering into the remaining construction contracts for the minimal operating segment of the project, as shown in this table:

| Design-Bid-Build Contracts | Anticipated Award Dates |
|------------------------------------|--------------------------------|
| Ramp H2R2 | 2 nd Quarter 2015 |
| Farrington Highway Stations Group | 2 nd Quarter 2015 |
| West Oahu Stations Group | 3 rd Quarter 2015 |
| Kamehameha Highway Stations Group | 4 th Quarter 2015 |
| City Center Utilities & Civil Work | 4 th Quarter 2015 |
| Design-Build Contracts | Anticipated Award Dates |
| Airport Guideway and Stations | 1 st Quarter 2016 |
| City Center Guideway and Stations | 2 nd Quarter 2016 |

Honorable Chair Jill N. Tokuda
Senate Committee on Ways and Means
April 07, 2015
H.B. 134, H.D. 1, S.D. 1
Testimony of BIA-Hawaii

BIA-Hawaii ONLY supports the extension of the GET to 2047 if an infrastructure financial plan and design cost estimates for West Kapolei and UH Manoa are required.

We are concerned about the level of transparency and accountability as the project moves forward. We understand that in any construction project you will encounter delays and unforeseen circumstances that may increase construction costs. For a project of this size, a certain degree of cost overrun should be expected.

Our biggest concern is with the lack of information and a plan for providing the necessary infrastructure to support the planned growth within the transit corridor. The City should be required to provide a comprehensive plan to provide the necessary sewer, water, and drainage infrastructure capacity to support the planned densities along the transit corridor. Rather than reacting to or pre-selecting possible or potential landowners/developers along the transit corridor, the City should be pro-active in providing the basic backbone infrastructure capacity to support the planned growth and let the market dictate where and when density should be developed along the transit corridor.

Without leadership in how infrastructure capacity should be provided along the transit corridor, investors/developers will be reluctant to pursue projects due to the risk and uncertainty of who will pay for the regional infrastructure improvements.

Thank you for the opportunity to express our views on this matter.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

April 6, 2015

The Honorable Jill N. Tokuda, Chair
The Honorable Ronald D. Kouchi, Vice Chair
and members
Committee on Ways and Means
Hawai'i State Senate
Honolulu, Hawai'i 96813

RE: Support for HB134 HD1 SD1 and Comments on Proposed HB134 HD1 SD2

Dear Chair Tokuda, Vice Chair Kouchi, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

Over the past several years, we have been strong advocates for the Honolulu Rapid Transit project, an important endeavor which will:

- Provide commuters with a fast, safe, and reliable alternative to driving in traffic congestion, eliminating tens of thousands of car trips that would otherwise be taken in private vehicles;
- Generate thousands of jobs in construction, engineering, and related fields, as well as additional indirect jobs in all sectors of our island's economy;
- Create the potential for transit-oriented development to take place in and around station areas, giving families the opportunity to affordably live, work, shop, and play closer to home; and
- Offer a more sustainable future for our island home through reduced CO2 emissions and less dependence on costly, imported oil.

These benefits, among others, will not be fully realized if the project does not have adequate funding to complete the Locally Preferred Alternative, which extends from West Kapolei to the University of Hawai'i at Mānoa.

Accordingly, we **support HB134 HD1 SD1**, which provides a mechanism to fully fund completion of the Locally Preferred Alternative. HB134 HD1 SD1 would extend the deadline for counties to adopt a county surcharge on state tax to 12/31/2015; extend the county surcharge on state tax to 12/31/2027; authorize the legislature to extend the county surcharge on state tax beyond 12/31/2027, by concurrent resolution, up to two times for 10-year periods each, to no later than 12/31/2047; and specify requirements that must be completed before the legislature may consider introduction of a concurrent resolution to extend the county surcharge on state tax.

The **proposed HB134 HD1 SD2, however, does not appear to provide a mechanism to fully fund completion of the Locally Preferred Alternative**. HB134 HD1 SD2 would, among other things, only allow counties that have already established a county surcharge on state tax to extend the surcharge on state tax to 12/31/2027 and limit the use of surcharge revenues to capital costs. By our analysis, the extension proposed in the SD2 version does not appear to be able to fully fund completion of the Locally Preferred Alternative from West Kapolei to the University of Hawai‘i at Mānoa. **Therefore, we respectfully recommend that your committee consider extending the surcharge of state tax to a longer period of no less than 25 years to 12/31/2047 in order to fully fund completion of the Locally Preferred Alternative.**

We are proud of the remarkable work that our members have accomplished so far in constructing the project, including relocating utilities along the route, constructing facilities at the Rail Operations Center, drilling and pouring hundreds of shafts and columns, erecting balanced cantilever structures over the H-1 freeway, and casting and erecting numerous segments which comprise the westernmost two miles of the guideway. We look forward to having even more members work on this historic project in the years ahead as it advances toward full completion to West Kapolei and the University of Hawai‘i at Mānoa.

We thank you for the opportunity to provide these comments on HB134 HD1 SD1 and the proposed HB134 HD1 SD2.

Mahalo,

A handwritten signature in black ink, reading "Tyler Dos Santos-Tam". The signature is fluid and cursive, with the first name "Tyler" being the most prominent.

Tyler Dos Santos-Tam
Executive Director
Hawai‘i Construction Alliance
execdir@hawaiiconstructionalliance.org



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April 7, 2015
9:00 AM
Conference Room 211

To: Senate Committee on Ways and Means
Sen. Jill Tokuda, Chair
Sen. Ronald Kouchi, Vice Chair

From: Grassroot Institute of Hawaii
President Keli'i Akina, Ph.D.

RE: HB 134 -- RELATING TO TAXATION
Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer comment on HB 134 and the proposed SD 2, which would reauthorize and extend the county surcharge on state tax through 2027.

Though the changes proposed by this amendment make important strides toward greater accountability and public input on any county surcharge, we are concerned that the long term effect of raising the state excise tax is being overlooked.

The nature of our state's General Excise Tax already places Hawaii among the worst states for sales and user taxes. The 2014 ALEC-Laffer State Economic Competitiveness Index (otherwise known as *Rich States, Poor States*) ranks Hawaii 50th among all states for its sales tax burden, meaning that the GET contributes a significant negative effect to the state's economic outlook.¹ The Tax Foundation ranks Hawaii 37th in state business tax climate, in part because of the GET (ranked 31st in their study).² At least one study of OECD countries has found that along with corporate and personal taxes, consumption taxes like the state excise tax can be economically harmful over the long-term.³

In fact, economic theory recommends using consumption taxes like the excise tax as a way to influence consumer behavior and discourage purchase or use of the product taxed. A report from Deutsche Bank making recommendations to boost economic growth in Europe following the financial crisis posits that ideally any increase in a consumption tax would be offset by no more than an equal decrease in demand. (For our purposes, that means we would hope that a .25% surcharge would cause no more

¹ See <http://www.alec.org/publications/rich-states-poor-states/>.

² Available at <http://taxfoundation.org/article/2013-state-business-tax-climate-index-results>.

³ Norman Gemmell, Richard Kneller, & Ismael Sanz, *The Timing and Persistence of Fiscal Policy Impacts on Growth: Evidence from OECD Countries*, 121 Economic Journal F33-F58 (2011).

than a .25% drop in demand, purchases, or revenue.) However, as the author of the report concludes, “this result is based on strong assumptions that make realistic implementation impossible”⁴ In other words, the inevitable effect of raising the excise tax is to discourage consumption, and any realistic model has to account for the probability that an increase in revenue will be offset by the possibility of a greater decrease in consumption. The biggest loser in this transaction is the Hawaii business.

Nor are businesses the only ones burdened by the excise tax. A study from the Institute on Taxation and Economic Policy (ITEP) criticized Hawaii for its regressive taxation practices, ranking it the 15th unfair tax system in the country. The GET in particular came under criticism as falling particularly heavily on those least able to afford it. According to ITEP, payment of sales and excise taxes takes up an average of 11% of family income for the poorest 20% of earners.⁵

The current trend of increasing state and county revenues via various state tax increases and surcharges represents the sort of short-term planning that inevitably leads to economic troubles.

The effort to include greater accountability--both in terms of the capital projects that are now the sole beneficiaries of the surcharge (in the proposed SD 2) and in terms of the ability of the counties to enact and extend the surcharge--is a step in the right direction. However, this does not negate the need to look for better solutions to the state’s desire to raise revenue.

The people of Hawaii were told that this was a temporary measure, but are now faced with the possibility of a long-term drain on their pocketbook. In the end, it adds up to a significant burden on our businesses, our economy, and our citizens.

Thank you for the opportunity to submit our comments.

Sincerely,
Keli’i Akina, Ph.D.
President, Grassroot Institute of Hawaii

⁴ Frank Zipfel and Caroline Heinrichs. *The Impact of Tax Systems on Economic Growth in Europe*, Deutsch Bank Research, Oct. 5, 2012. Available at http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000295266/The+impact+of+tax+systems+on+economic+growth+in+Europe%3A+An+overview.pdf

⁵ See <http://www.itep.org/whopays/states/hawaii.php>.

Testimony of Brooke Wilson
Pacific Resource Partnership

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Ronald D. Kouchi, Vice Chair

HB 134, HD1, SD2 (PROPOSED) – Relating to Taxation

Tuesday, April 07, 2015
9:00 A.M.
Conference Room 211

Dear Chair Tokuda, Vice Chair Kouchi and members of the committee,

PRP is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.

We support the intent of HB 134, HD1, SD2 (PROPOSED) to extend the county surcharge on state tax. We also support that monies collected from the GET surcharge be directed towards "capital costs" to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design and construction.

While we appreciate the intent of the proposed SD2, we would like to humbly request that the county surcharge on state tax be kept in the amount of one-half percent on excise taxes for 25 years.

By extending the county surcharge on state tax for 25 years, thousands of jobs in construction will continue. In addition, the GET extension of 25 years will ensure that construction of the Locally Preferred Alternative (LPA) to UH Manoa and West Kapolei is realized; without delay, and seamlessly.

For the reasons mentioned above, we respectfully request the proposed SD2 be amended to not sunset in less than 25 years. Thank you for allowing us to voice our opinion on this matter.



TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Extend county surcharge on state tax

BILL NUMBER: HB 134, Proposed SD-2

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: This bill not only allows the City & County of Honolulu to extend the county surcharge on the general excise tax for five years past its current sunset date of 2022, but it also allows the other counties to adopt a similar surcharge. One large problem that has not yet been addressed is the 10% of all collections that goes directly into the general fund, ostensibly to pay for costs of collection but which, in reality, is grossly in excess of those costs. This 10% diversion is unconstitutional, either as an intergovernmental tax or as a GET that discriminates against Oahu businesses, and must be fixed.

BRIEF SUMMARY: Amends HRS section 46-16.8 to allow a county that has established a surcharge on state tax to extend the surcharge from January 1, 2023 to December 31, 2027 at the same rate; provided that the county electing to extend this surcharge shall do so by ordinance and such ordinance shall be adopted prior to January 1, 2016, but no earlier than July 1, 2015.

Allows a county that has not established a surcharge on state tax before the effective date of this act to establish a surcharge on state tax by ordinance adopted prior to January 1, 2016, but no earlier than July 1, 2015; provided that any county surcharge on state tax authorized by ordinance shall be levied between January 1, 2017 and December 31, 2027.

If the surcharge is extended or another county imposes a surcharge, the surcharge revenue shall be only used for capital costs of public transportation and not operating costs.

Requires the board of directors of the transit agency constructing the locally preferred alternative for a mass transit project that was established prior to the effective date of the measure to: conduct annual audits; submit annual reports to the legislature and the governor on transit-oriented development initiatives, management and financial performance, and status reports submitted to the federal government; and place audits and reports on the board's agenda and, in accordance with the sunshine law, take testimony on the audits and reports.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: This bill relates to the 0.5% surcharge on the general excise tax that is currently imposed in the City and County of Honolulu. It is currently scheduled to sunset on December 31, 2022. This measure would extend the surcharge to December 31, 2027. The measure would also allow any county to impose a surcharge on state tax between January 1, 2017 and December 31, 2027 which would also increase the cost of living in any other county that adopts such a surcharge.

When the surcharge legislation was adopted back in 2006, taxpayers, especially those in Honolulu, were assured that the 0.5% surcharge was going to be temporary. The funds were supposed to be paid to build

the system, and not go toward ordinary maintenance. Between HART's testimony in the subject matter committees and Mayor Caldwell's State of the City speech, it is now obvious that they want an operating subsidy for the project, which they think is desirable because visitors will pay a third of it according to them. While this measure would restrict the surcharge revenue for only capital costs, we question the validity of the assumption that one-third of the tax will be paid by visitors. We present the following calculations from Hawaii Tourism Authority and DOTAX data.

| | 2013 | 2012 | 2011 |
|----------------------------------------------------|----------|----------|----------|
| Total Visitor Expenditures (all data in \$mil) | 14,520.5 | 14,364.8 | 12,254.6 |
| Total Visitor Expenditures in Honolulu | 7,358.7 | 7,672.5 | 6,351.4 |
| Oahu Surcharge on Visitor Spending = 0.5% | 36.8 | 38.4 | 31.8 |
| Oahu Surcharge Collections | 236.6 | 181.6 | 219.6 |
| Oahu Surch. on Visitor Spending as % of All Surch. | 15.55% | 21.13% | 14.46% |

Source: Hawaii Tourism Authority, Dept. of Taxation. Tax Foundation of Hawaii calculations

| | 2013 | 2012 | 2011 |
|------------------------------------------------|----------|----------|----------|
| Total Visitor Expenditures (all data in \$mil) | 14,520.5 | 14,364.8 | 12,254.6 |
| GET on Visitor Spending = 4.0% | 580.8 | 574.6 | 490.2 |
| GET Collections | 2,907.6 | 2,844.7 | 2,588.5 |
| GET on Visitor Spending as % of All GET | 19.98% | 20.20% | 18.94% |

Source: Hawaii Tourism Authority, Dept. of Taxation. Tax Foundation of Hawaii calculations

Contributing to the financial woes of the City and County is the fact that the state is siphoning 10% of all surcharge collections into the general fund. This diversion was supposed to represent payment to the state for the costs incurred in administering the surcharge. After all, the department of taxation collects and enforces the tax and just writes the county a check. But the amount diverted turns out to be a massive amount of money, almost as much as the entire operating budget of the department of taxation, and is obviously far in excess of the costs involved. We believe this diversion to be in violation of the constitutional principle called "intergovernmental tax immunity" – governments don't tax each other – and is therefore invalid. If all, or some, of these unlawfully collected receipts go back to the City, the problems that the City is now complaining about will be easier to solve.

Specifically, in the fiscal year ending June 30, 2014, about \$242 million was collected for the county surcharge, meaning that the state kept \$24 million. Did it cost that much to collect the surcharge? The Governor's Budget in Brief says that it takes \$28 million a year for DOTAX to do everything it does, including collecting \$6.34 billion in total taxes other than the county surcharge.

The doctrine of “intergovernmental tax immunity” was established by the United States Supreme Court in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), which ruled unanimously that states may not regulate property or operations of the federal government. There, Maryland state law subjected banks not chartered by the state to restrictions and taxes. In particular, Maryland attempted to impose those taxes and restrictions on the Second Bank of the United States, which at the time was the only out-of-state bank in Maryland. “That the power to tax involves the power to destroy,” said the Court, striking down the tax. Some years later, the Court said in *Collector v. Day*, 78 U.S. (11 Wall.) 113 (1870), that the principle also works in reverse, so that the federal government doesn’t have the right to tax state and local governments when they exercise their sovereign functions.

The Hawaii Supreme Court hasn’t spoken on the extent to which that principle applies to the counties. The issue was mentioned, but not applied, in *State v. City & County of Honolulu*, 99 Haw. 508, 57 P.3d 433 (2002). However, the constitutional principles should also apply to the state and counties. In order for the state and county governments to coexist within their respective spheres, they should not be burdened by each other, the same as is required for federal and state governments to coexist within their respective spheres. State and county governments aren’t supposed to be taxing each other as well.

The Hawaii Supreme Court has given us some guidelines to distinguish between user fees and taxes. In *State v. Medeiros*, 89 Hawaii 361, 973 P.2d 736 (1999), it said that the courts should analyze whether the charge in question: “(1) applies to the direct beneficiary of a particular service, (2) is allocated directly to defraying the costs of providing the service, and (3) is reasonably proportionate to the benefit received.” Under these principles, the 10% charge is a tax. It fails item (2) because the money collected goes straight to the general fund, and it fails item (3) because this charge brings in what amounts to 85% of DOTAX’s budget while the county surcharge itself makes up less than 4% of the revenues DOTAX collects. As such, it can be seen as a tax on the City & County of Honolulu’s governmental functions and it violates intergovernmental tax immunity.

Alternatively, we can look at the reality that governments don’t pay taxes, but people do. When you take the impost in question as a tax, businesses in the City & County of Honolulu need to pay more into the general fund – presently 4.05% – while those in other counties pay 4.00%. That effectively makes the general excise tax discriminatory against businesses in Honolulu, without a rational basis for the discrimination. Equal Protection concerns are implicated. To sum up, the 10% siphon off the revenues of the surcharge is unconstitutional. This needs to be fixed.

Above all, lawmakers should be aware that of all the taxes imposed in Hawaii, the general excise tax imposes a serious burden on businesses and individuals alike. It is not only regressive, taking a larger percentage of a poorer family’s budget than a high income family’s budget, but it also takes its share off the top of a business’ income without regard to the profitability of that business.

Digested 4/6/15